

Appl. No. 09/446,550  
Docket No. CM1519Q  
Response dated February 15, 2007  
In response to Office Action mailed on June 15, 2006  
Customer No. 27752

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REMARKS

Claim Status

Claims 1-26 are pending. Claims 15-20 have been withdrawn. Claims 1-14 and 21-26 stand rejected under 35 USC § 103. With this response, claim 15 is rejoined as allowed in the Office Action (page 3, paragraph 1), claim 26 is cancelled, and no claims are amended or added.

Rejection Under 35 USC § 112

Claim 26 stands rejected under 35 USC § 112. Claim 26 is cancelled.

Rejections Under 35 USC § 103 Over Dobrin in view of Wu

Claims 1-14 and 21-26 stand rejected under 35 USC § 103(a) as being unpatentable over Dobrin, et al. (US 5,628,737) in view of Wu, et al. (US 5,865,926). The Applicant does not admit that any characterization by the Office Action regarding these rejections is correct, but discusses such characterizations herein for the sake of argument. The Applicant traverses the rejections of the pending claims under 35 USC § 103 over the Dobrin and Wu references for the reasons discussed below.

No teaching, suggestion, or motivation to combine

Independent claim 1, as previously presented, recites in part an "Absorbent article" comprising "a core region comprising a core backsheet material" and "a chassis region . . . comprising a chassis backsheet material" wherein "the core backsheet material and the chassis backsheet material are each breathable and exhibit different degrees of breathability such that MVTR value of the core backsheet material is lower than that of the chassis backsheet material" and "wherein said breathability of said core backsheet material is provided by cracks formed around said particulate filler material."

The Office Action cited an absorbent article of the Dobrin reference with a backsheet modified by a method of making a microporous laminate from the Wu reference against the above-cited portion of the Applicant's claim 1. (Page 4-5.) The Office Action also stated:

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In this case, Wu teaches a method to improve the breathability of a film laminate while maintaining the impermeability of the laminate. Dobrin discloses the desire for a breathable laminate that is impermeable to liquids, as described in column 6, lines 35-42. Therefore the modification of the article of Dobrin in view of the teaching of Wu would have been obvious to one of ordinary skill in the art to provide an improvement in the qualities of the laminate.

(Office Action, page 2, paragraph 2.) In context, the cited portion of the Dobrin reference states:

The backsheet 26 of the present invention is that portion of the diaper 20 which is generally positioned away from the wearer's skin and which prevents the exudates absorbed and contained in the absorbent core 28 from wetting articles which contact the diaper 20 such as bedsheets and undergarments. Thus, the backsheet 26 is preferably impervious to liquids (e.g., urine) and is preferably manufactured from a thin plastic film, although other flexible liquid impervious materials may also be used. (As used herein, the term "flexible" refers to materials which are compliant and will readily conform to the general shape and contours of the human body.) However, the backsheet 26 permits vapors to escape from the diaper 20. A suitable material for the backsheet 26 is a thermoplastic film having a thickness of from about 0.012 mm (0.5 mil) to about 0.051 mm (2.0 mils), preferably comprising polyethylene or polypropylene.

The backsheet 26 of the present invention may comprise a single member such as the film described above, or may comprise a number of materials joined together to form the backsheet 26. For example, the backsheet may have a central region 74 comprising one film or other member and one or more outer regions 76 joined to the central region 74 comprising the same or different films or other materials. In one preferred embodiment, the backsheet 26 comprises a central region 76 comprising a liquid impervious, non-apertured film and two opposing outer regions 76 comprising an air pervious, apertured film. The means by which any portions of such a backsheet are joined may include any means known in the art such as adhesives, heat, pressure, heat and pressure and ultrasonic bonds. Further, the backsheet 26 may comprise any number of layers of material joined together to form a laminate. If the backsheet 26 is a laminate, the layers need not be uniform throughout the backsheet. For example, the central region 74 of the backsheet 26 may comprise more layers or layers of different material than the outer regions 76.

(Dobrin, col. 6, lines 30-65.) From the Applicant's review, the above-cited portion of the Dobrin reference does not appear to express a desire for an unknown breathable laminate

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that is impermeable to liquids, but describes a backsheets structure "of the present invention" with "outer regions 76" that are "air pervious" and a "central region 76" that is "liquid impervious." The Applicant asserts that the above-cited portion of the Dobrin reference does not provide a teaching, suggestion, or motivation to modify the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference, as cited against the above-cited portion of the Applicant's claim 1.

The Office Action further stated that "It would therefore be obvious to one of ordinary skill in the art at the time of invention to construct the laminate of Dobrin using the polymeric film layer of Wu to increase the breathability of the laminate." (Page 5, paragraph 2.) "There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998)." MPEP § 2143.01 (I). From the Applicant's review, the Dobrin reference appears to describe the breathability of its backsheet as an inventive solution, not a problem that needs to be solved. Further, neither the Wu reference, nor the prior art appear to disclose a motivation to increase the breathability of the backsheet of the Dobrin reference. The Applicant asserts that there is no teaching, suggestion, or motivation to increase the breathability of the backsheet of the absorbent article of the Dobrin reference, so there is no teaching, suggestion, or motivation to modify the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference, as cited against the above-cited portion of the Applicant's claim 1.

#### Cited references conflict

"The test for obviousness is what the combined teachings of the references would have suggested to one of ordinary skill in the art, and all teachings in the prior art must be considered to the extent that they are in analogous arts. Where the teachings of two or more prior art references conflict, the examiner must weigh the power of each reference to suggest solutions to one of ordinary skill in the art, considering the degree to which one

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reference might accurately discredit another. *In re Young*, 927 F.2d 588, 18 USPQ2d 1089 (Fed. Cir. 1991)." MPEP § 2143.01 (II).

The Dobrin reference states:

Backsheets which are pervious to vapor are generally known as breathable backsheets and have been described in the art. In general, these backsheets are intended to allow the passage of vapor through them while retarding the passage of liquid. For example, U.S. Pat. No. 3,156,242 issued to Crowe, Jr. on Nov. 10, 1964 teaches the use of a microporous film as a breathable backsheet. U.S. Pat. No. 3,881,489, issued to Hartwell on May 6, 1975, teaches a breathable backsheet comprising in combination two layers, the first of which is a low void volume perforated thermoplastic film and the second of which is a porous high void volume hydrophobic tissue. U.S. Pat. No. 3,989,867 issued to Sisson on Nov. 2, 1976 teaches a breathable backsheet provided with tapered hollowed bosses which prevent the passage of liquids while allowing vapors to pass readily therethrough.

(Dobrin, col. 1, lines 31-46.) Thus, the Dobrin reference appears to acknowledge the existence of microporous breathable laminates that are impermeable to liquids, similar to the microporous laminate described in the Wu reference.

The Dobrin reference also states:

While these backsheets do provide improvements over the impermeable backsheets of the prior art, they can be relatively expensive and/or difficult to manufacture, especially at high speeds. Often, numerous layers of materials or coatings are needed to provide breathable backsheets capable of containing liquids that may be absorbed by the diaper. Further, in some cases, the breathable backsheets may not effectively contain liquid, especially when the diaper is subjected to the normal forces created by the movements of the wearer.

(Dobrin, col. 1, lines 46-55.) Thus, the Dobrin reference also appears to recognize some disadvantages of microporous breathable laminates that are impermeable to liquids.

The Applicant submits that the Dobrin reference's recognition of disadvantages of microporous breathable laminates that are impermeable to liquids at least partially discredits such laminates as taught by the Wu reference. This discreditation creates a conflict between the Dobrin reference and the Wu reference. As a result, it would not have been obvious to modify the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference.

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Cited combination would defeat intended purposes

"If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification." *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984). The Dobrin reference states:

Therefore, it is an object of the present invention to provide a disposable absorbent article having good containment characteristics while having breathable side panels to ensure comfort for the wearer.

It is a further object of the present invention to provide a disposable absorbent article having a backsheet comprising apertured and non-apertured zones, the non-apertured zone juxtaposed the absorbent core and the apertured zone(s) extending outwardly from the non-apertured zone to form at least a portion of the side panel(s) of the disposable absorbent article.

It is yet another object of this invention to provide a disposable absorbent article having a backsheet comprising apertured and non-apertured zones, wherein the backsheet further comprises a vapor pervious and/or liquid pervious nonwoven web which provides the garment-facing surface of the backsheet a cloth-like feel.

It is still another object of the present invention to provide a disposable absorbent article having good containment and breathability characteristics that is economical and easy to manufacture at high speeds.

(Dobrin, col. 1, line 55 – col. 2, line 10.) The Applicant notes that this passage describing objects of the invention immediately follows the passage recognizing some disadvantages of microporous breathable laminates that are impermeable to liquids. Thus, the Dobrin reference appears to teach its own invention as an alternative to microporous breathable laminates that are impermeable to liquids. It appears that the intended purpose of the Dobrin reference is to economically and easily resolve some of the recognized disadvantages of microporous breathable laminates that are impermeable to liquids.

From the Applicant's review, the references appear to indicate that modifying the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference would not be economical, as intended by the Dobrin reference. The Dobrin reference appears to indicate that a simple "thin plastic

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film" can be used as a backsheet for the absorbent article. (Col. 6, lines 35-37.) By contrast, the method of the Wu reference appears to require films with specific additives (col 3, lines 35-38) or particular polymer blends (col. 3, lines 41-58). It appears that modifying the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference would require more expensive materials, which would render the Dobrin reference unsatisfactory for its economical intended purpose. As a result, it would not have been obvious to modify the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference.

Further, the Office Action stated that "Dobrin as modified by Wu, comprises cracks providing breathability to the entire laminate . . . [while] the outer regions comprise apertures in addition to cracks." (Page 3, paragraph 1.) The Applicant notes that adding the apertures would require a first processing (Dobrin, col. 9, lines 11-48) while adding the cracks would require a second processing (Wu, col. 4, line 51 – col. 6, line 35). It appears that modifying the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference would require additional, more difficult processing, which would render the Dobrin reference unsatisfactory for its economical and easy to manufacture intended purposes. As a result, it would not have been obvious to modify the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference.

For all of these reasons, the Applicant submits that it would not have been obvious to one of ordinary skill in the art to modify the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference, to form the invention of the Applicant's independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection for independent claim 1 and for the rejected claims which depend therefrom.

No reasonable expectation of success

To establish *prima facie* obviousness of a claimed invention, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ

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375 (Fed. Cir. 1986). This reasonable expectation of success must be found in the prior art, and not based on the Applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). As described above, to modify the backsheet of the Dobrin reference with the method of making a microporous laminate would require a first process for forming the apertures and a second process for forming the micropores. From the Applicant's review, there appears to be no mention in the Wu reference that a film with apertures, as described in Dobrin, can be processed to add micropores. Similarly, there appears to be no reference in the Dobrin reference that a film with micropores, as described in Wu, can be processed to add apertures. Accordingly, there appears to be no reasonable expectation of success to modify the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference, to form the invention of the Applicant's independent claim 1. For this reason, the Applicant submits that it would not have been obvious to one of ordinary skill in the art to modify the backsheet of the absorbent article of the Dobrin reference with the method of making a microporous laminate from the Wu reference, to form the invention of the Applicant's independent claim 1. As a result, the Applicant respectfully requests reconsideration and withdrawal of the 103(a) rejection for independent claim 1 and for the rejected claims which depend therefrom.

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Conclusion

This response represents an earnest effort to place the application in proper form and to distinguish the invention as now claimed from the applied references. In view of the foregoing, reconsideration of this application, and allowance of Claims 1-14 and 21-25 is respectfully requested.

Respectfully submitted,

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